UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

COMPUTER SCIENCES CORPORATION Plaintiff, v. JOHN PAUL MAGUIRE, Defendant.	)	Case No. 1:16-CV-00261-GBL-IDD

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO
RECONSIDER RULING ON DEFENDANT'S MOTION IN LIMINE NO. 1

Plaintiff, Computer Sciences Corporation ("CSC" or "Plaintiff") in support of its Motion for Reconsideration of the portion of the Court's December 6, 2016 Order (Docket No. 138, Section 9) granting Defendant John Maguire's ("Maguire" or "Defendant") Motion in Limine to exclude non-solicitation evidence with regards to Bill Hutton, respectfully states as follows.

INTRODUCTION

On November 25, 2016, Maguire submitted an Motion in Limine ("Motion") to exclude (among other things) all evidence related to Bill Hutton ("Hutton"). In the accompanying Memorandum (Dkt. No. 117), Maguire represents that CSC made its very first claim that Maguire solicited Bill Hutton in its Opposition to Maguire's Motion for Summary Judgment on October 3, 2016, after the close of discovery in this action. This assertion is simply false. Plaintiff previously had disclosed its claims regarding Hutton in detail to Defendant prior to the close of discovery and conduct of the depositions of the principals in this action.

Plaintiff recognizes that reconsideration of an order, particularly during trial, is an extraordinary remedy. Here, the order excluding the Hutton evidence specifically recognized that a "court's ruling regarding a motion in limine is 'subject to change when the case unfolds, particularly if the actual testimony differs from what was [expected]'." Memorandum, p. 3. Moreover, as discussed below, CSC respectfully submits that reconsideration is warranted under the general principles for reconsideration set forth in Fed. R. Civ. p. 54(b), as guided by the principles of Rule 59(e and 60(b), to prevent manifest injustice. In this instance, Defendant would not be prejudiced by trying the Hutton claim; by contrast, Plaintiff is prejudiced by the exclusion of all evidence related to Mr. Hutton, particularly in light of the ruling denying the Defendant's Motion for Summary Judgment. Accordingly, Plaintiff respectfully asks this Court to reconsider its order granting Defendant's Motion in Limine as to evidence regarding Hutton.

LEGAL STANDARD

Reconsideration of an interlocutory order is governed by Rule 54(b), and is not subject to the strict standards that govern reconsideration of a final judgment. *Microstrategy Services Corp. v. Openrisk, LLC*, No. 1:14cv1244, 2015 WL 2126924 (E.D. Va. May 6, 2015) (internal quotation omitted). The Court is nonetheless guided by the general principles of Rules 59(e) and 60(b). *Id.* Departing from a previous ruling is within the sole discretion of the district court "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Id.* (*quoting Hill v. Braxton*, 277 F.3d 701, 708 (4th Cir. 2002).

Here, CSC asks the Court to exercise its discretion and reconsider a portion of its order excluding evidence to prevent manifest injustice.

FACTUAL BACKGROUND

CSC filed suit against Maguire on March 9, 2016. Thereafter, CSC amended its Complaint on June 3, 2016. In both the Original Complaint (Dkt. 1) and CSC's Amended

Complaint (Dkt. 98), CSC maintains that Maguire "breached his agreements by participating in the solicitation of **CSC employees** to come work for Cognizant…" CSC's First Amended Complaint at ¶ 43. Despite Defendant's unfounded assertions, CSC did not limit itself to claims regarding only Eddie Woods. Nor did CSC surprise Defendant with allegations and evidence regarding Hutton. Rather, CSC pled that Maguire participated in the solicitation of more than one employee, and Maguire failed to file a motion under Rule 12 challenging the sufficiency of the allegation or seeking a more definite statement.

1. The Court Previously Decided This Issue on Summary Judgment.

On November 10, 2016, Judge Lee heard oral arguments for Defendant's Motion for Summary Judgment. Judge Lee subsequently issued an Opinion and Memorandum (Dkt. 110) (the "Summary Judgment Order") denying the Motion for Summary Judgment in its entirety. In both the Court's Findings from the bench at the end of the argument, and in the Summary Judgment Order that followed, the Court specifically found that Maguire's attempts to solicit Hutton to Cognizant are at issue in this case. The Court's Findings include:

> And here is seems to me that the question of breach of contract as it relates to the solicitation of other CSC employees, whether it's Hutton or Wood[s], are questions of fact that cannot be resolved on summary judgment because there are genuine issues of fact concerning what Hutton said to Maguire, what Maguire did in connection with Cognizant … So, I would deny the motion as to Count I.

Exhibit 1, p. 3 (Transcript of Court's Findings, November 10, 2016). The Summary Judgment Order likewise concludes that the Hutton claims are proper for trial:

> The Court holds that a genuine issue of material fact exists as to whether Maguire solicited Woods or any other CSC employee, and whether Maguire materially breached his Employment Agreement as to Hutton…**Further, both sides' claims as to Hutton present a genuine dispute of material fact that a jury must decide.**

Dkt. No. 110, pp. 11-12 (emphasis added).

Based on this unambiguous ruling -- which Maguire did not appeal -- CSC reasonably understood that it was proceeding to trial on these issues, including the issues regarding Maguire's improper recruitment of Hutton to his new employer, Cognizant. CSC respectfully submits that, if any party should be surprised or unfairly prejudiced by the exclusion of evidence regarding Hutton, it is CSC.

2. Bill Hutton Has Become Central to this Litigation, Which Comes As No Surprise to Defendant.

There is no question that Bill Hutton has been central to this case for many months. Maguire and his legal team were placed on notice regarding CSC's claims regarding Mr. Hutton in each of the following instances:

- May 27, 2016. CSC alleges that Maguire breached his contractual obligations to CSC by…soliciting or participating in the solicitation of one or more former employees of CSC by Cognizant". CSC's Motion for Leave to File Amended Complaint pg. 1 (Dkt. No. 29)

- August 18, 2016. CSC serves subpoena on Bill Hutton for his deposition and document production. A copy is provided contemporaneously to Maguire's counsel.

- August 23, 2016. CSC conducts deposition of Bill Hutton; Maguire's counsel examines Hutton from page 94 to page 120 (26 pages), including specific and pointed questions about Hutton.

- August 25, 2016: CSC produces a series of documents reflecting Maguire's efforts to recruit Hutton to Cognizant and Maguire's advocacy for Hutton with Cognizant's senior management.

  See **Exhibit 2** (selected documents related to Hutton produced by CSC on August 25, 2016)

- September 12, 2016: CSC's response to Maguire's (second) Rule 11 letter details specific allegations about efforts to recruit Bill Hutton:

  > With respect to Maguire's assistance in the recruiting of Eddie Woods and/or other current or former CSC employees to Cognizant … [t]he record reflects that: (i) less than six months after Bill Hutton left CSC, Maguire forwarded emails from Hutton

> to D K Sinha, the President for Client Services at Cognizant, and stated that Hutton 'might be worth a look;' (ii) still within this six month period, Maguire emailed Mike Meyer and Vinod Bagal at Cognizant to say 'Bill [Hutton] could help us in deal shaping;' and (iii) Maguire informed Hutton that 'I have a guy that want to talk to you - resend me your CV please.

See **Exhibit 3**, attached hereto.

- September 21, 2016. CSC sends Maguire an email with a proposed Statement of Undisputed Facts in connection with the upcoming Final Pretrial Conference. Paragraphs 27-30 of this proposed stipulation specifically address the recruitment of Mr. Hutton.

  See **Exhibit 4**, attached hereto.

- September 21, 2016. Maguire listed Bill Hutton as a witness it may call live or by deposition at trial in its Rule 26(a)(3)(A) Pretrial Disclosures. (Dkt. 77).

- September 21, 2016. CSC listed Bill Hutton as a witness it expects to call at trial in its Rule 26(a)(3)(A) Pretrial Disclosures. (Dkt. No. 78).

- September 21 and 26, 2016. Maguire was still producing documents related to Hutton at this time. (*See* Dkt No. 130, page 1).

- September 28, 2016. CSC conducts the deposition of John Maguire and inquiries about his efforts to assist Bill Hutton in obtaining a job with Cognizant in early 2015. He is asked about efforts to recruit Bill Hutton.

- September 28, 2016. Maguire conducts deposition of William Deckelman/CSC and specifically asks about claims related to John Maguire's efforts to recruit Bill Hutton to Cognizant.

On November 25, 2016, some ten weeks after CSC detailed Hutton allegations in response to Maguire's Rule 11 letter, Maguire argued in his Motion in Limine that "allowing the Hutton claim to go forward will be unfairly prejudicial to Maguire" because "CSC raised the Hutton allegations for the first time in opposition to summary judgment, after discovery had closed." Maguire's Memorandum in Support of Motion in Limine, (Dkt. No. 117), p. 5. This statement is simply untrue. Maguire had long been on notice about Hutton, and CSC had detailed specific Hutton allegations no later than September 12, 2016. **Exhibit 3**. Maguire had the opportunity to depose Mr. Deckelman (and CSC) on related topics during his deposition on September 28, 2016, which was within the deposition deadline established by the Court. *See* Docket No. 68 (extending discovery deadline until September 29, 2016 for purpose of completing depositions). All of this occurred before CSC filed its memorandum in opposition to Defendant's Motion for Summary Judgment on October 3, 2016 (Dkt. No. 92).

Hutton was deposed on August 23, 2016. Not only did CSC take his deposition and inquire about Maguire's unlawful solicitation of him, but Defendant's counsel *also* asked questions regarding (among other things) Maguire's solicitation.[1] Specifically, counsel for Defendant asks: (with regard to a February 5, 2015 LinkedIn Message, also Plaintiff's Exhibit 26) whether "this was the first time that you had contacted John Maguire about getting a job; correct, or about potentially talking about working at Cognizant" and Hutton answers in the affirmative. **Exhibit 5** (Hutton Deposition 107: 8-11). Hutton *admits* that Maguire was in touch with him about potentially securing a job at Cognizant, yet Defendant still claims that it is surprised by the evidence surrounding Maguire's unlawful solicitation of current or former CSC employees.

Defendant's assertion that CSC did not properly raise issues surrounding the solicitation of Hutton is contradicted by the record. Both parties have been filing pleadings, conducting discovery, and exchanging correspondence regarding Hutton for many months. Both parties' pretrial exhibit lists contain multiple exhibits related to Mr. Hutton. *See* Plaintiff's Rule 26(a)(3) Disclosures (Dkt. No. 78), p. 4 (Exhibits 26, 27, 29, 30, 31, 32); Defendant's Rule 26(a)(3) Disclosures (Dkt. No. 77-1) (Exhibits 45, 46, 47). CSC's intention to pursue its allegations against Maguire and his unlawful solicitation of current or former CSC employees is of no

[1] Notably, Defendant's counsel asked Hutton 106 questions, amounting to 26 pages of testimony.

surprise to the Defendant, or to this litigation. Hutton has been the subject of document production, pleadings, exhibit lists, witness lists, and depositions.

CSC has not hid its intentions. In fact, it has been perfectly clear about its intent to utilize the discovery process in order to determine what employees (in addition to Eddie Woods) which Maguire unlawfully solicited. CSC has done just that. Discovery has revealed Maguire's substantial involvement with the solicitation of Hutton, including his advocacy on behalf of Hutton internally at Cognizant. CSC respectfully requests that the Court reconsider its decision to exclude evidence regarding the solicitation of Hutton at trial in this matter.

Defendant filed a Motion to Dismiss (Dkt. No. 5) to no avail. Defendant thereafter filed a Motion for Summary Judgment (Dkt. No. 38) which was denied. Defendant also filed a Motion for Terminating Sanctions, which was denied. (Dkt. No. 83). Defendant then, on the eve of trial, now attempts to use a Motion in Limine as a dispositive motion in an effort to circumvent the pleading and evidentiary support requirements of dispositive motions. CSC respectfully submits that it would be a manifest injustice to reward such tactics particularly where, as here, Defendant has long been on notice of the claim in question and the Court previously ruled that the issue would be considered at trial.

CONCLUSION

For the reasons stated herein, CSC respectfully requests this Court reconsider the portion of its Memorandum Opinion granting Defendant's Motion in Limine to exclude evidence related to Mr. Hutton.

Respectfully submitted,

/s/ J. David Folds

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified below via transmission of Notice of Electronic Filing generated by CM/ECF.

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